An Act

ENROLLED SENATE
BILL NO. 1374

By: Treat of the Senate

and

Denney of the House

An Act relating to long-term health care; amending 36 O.S. 2011, Section 4424, which relates to definitions; modifying certain definition; modifying certain payments; defining terms; adding category of prohibited entities; and providing an effective date.

SUBJECT: Long-term health care

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 36 O.S. 2011, Section 4424, is amended to read as follows:

Section 4424. Unless the context requires otherwise, the definitions in this section apply throughout the Long-Term Care Insurance Act.

1. a. "Long-term care insurance" means any insurance policy, certificate or rider, including qualified long-term care insurance contracts and long-term care partnership program contracts, which are advertised, marketed, offered or designed primarily to provide coverage for not less than twelve (12) consecutive months for each covered person on an expense incurred, indemnity, prepaid, or other basis, for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance,

or personal care services, provided in a setting other than an acute care unit of a hospital.

b. This term includes group and individual health policies or riders or group and individual life policies or annuities or riders which provide, directly or as a supplement, coverage for long-term care, whether issued by insurers, fraternal benefit societies, nonprofit health, hospital, and medical service corporations, prepaid health plans, health maintenance organizations, life care communities, or any similar organization.

c. This term also includes a policy or rider which provides for payment of long-term care benefits based upon cognitive impairment or the loss of functional capacity.

d. Long-term care insurance shall not include any insurance policy which is offered primarily to provide basic Medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage or related asset-protection coverage, catastrophic coverage, comprehensive coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage.

e. With regard to life insurance, this term does not include life insurance policies which accelerate the death benefit specifically for one or more of the qualifying events of terminal illness, medical conditions requiring extraordinary medical intervention, or permanent institutional confinement, and which provide the option of a lump-sum payment for those benefits and in which neither the benefits nor the eligibility for the benefits is conditioned upon the receipt of long-term care.

f. Notwithstanding any other provision contained herein, any product advertised, marketed or offered as long-term care insurance shall be subject to the provisions of this act.

2. "Applicant" means:

a. in the case of an individual long-term care insurance policy, the person who seeks to contract for such benefits, and

b. in the case of a group long-term care insurance policy, the proposed certificate holder.

3. "Certificate" means any certificate issued under a group long-term care insurance policy, which certificate has been delivered, or issued for delivery, in this state.

4. "Group long-term care insurance" means a long-term care insurance policy which is delivered, or issued for delivery, in this state and issued to:

a. one or more employers or labor organizations, or to a trust or to the trustees of a fund established by one or more employers or labor organizations, or a combination thereof, for employees or former employees, or a combination thereof or for members or former members, or a combination thereof, of the labor organizations, or

b. any professional, trade or occupational association for its members or former or retired members, or combination thereof, if such association:

(1) is composed of individuals, all of whom are or were actively engaged in the same profession, trade or occupation, and

(2) has been maintained in good faith for purposes other than insurance, or

c. an association, a trust, or the trustee or trustees of a fund established, created, or maintained for the benefit of members of one or more associations. Prior to advertising, marketing or offering such policy within this state, the association or associations, or the insurer of the association or associations, shall file evidence with the Insurance Commissioner that the association or associations shall have at the outset of transacting long-term care insurance in this state a minimum of one hundred (100) persons in the association or associations and shall have been organized and maintained in good faith for purposes other than that of obtaining insurance; shall have been in active existence for at least one (1) year; and shall have a constitution and bylaws which provide that (i) the association or associations hold regular meetings not less than annually to further purposes of the members, (ii) except for credit unions, the association or associations collect dues or solicit contributions from members, and (iii) the members have voting privileges and representation on the governing board and committees. Thirty (30) days after such filing the association or associations shall be deemed to satisfy such organizational requirements, unless the Commissioner makes a finding that the association or associations do not satisfy those organizational requirements, or

d. a group other than as described in subparagraphs a, b and c of this paragraph, subject to a finding by the Commissioner that:

(1) the issuance of the group policy is not contrary to the best interest of the public,

(2) the issuance of the group policy would result in economies of acquisition or administration, and

(3) the benefits are reasonable in relation to the premiums charged.

5. "Not-for-Profit Life care community" within the meaning of Section 1-853.1 of Title 63 of the Oklahoma Statutes means any not-for-profit organization that enters into an arrangement pursuant to which a person contracts for a place of residence and personal care services, including but not limited to services which progress from independent living to semi-dependent nursing care to acute nursing care, in consideration of ~~a payment or payments of fees prior to the delivery of services and accommodations. Life~~ an endowed prepayment, license or entry fee which has been actuarially established to meet the cost of the promised services and accommodations. For communities commencing operations after January 1, 2016, the amount of the endowed prepayment must be independently, actuarially determined, in compliance with the Actuarial Board, prior to opening the community and annually thereafter to ensure that sufficient payments are collected to meet the future services of the residents. The actuarial study shall take into consideration projected or actual project costs, resident fees and charges, resident contract provisions and any other factors affecting the operation of the facility. It shall contain mortality and morbidity data and an actuary's signed opinion that the proposed is feasible and that the study has been prepared in accordance with standards adopted by the American Academy of Actuaries. A not-for-profit life care community shall not include the following:

a. traditional landlord and tenant agreements utilizing periodic rental and security deposit payments,

b. residential care homes licensed pursuant to the Oklahoma Residential Care Act,

c. assisted living centers and continuum of care facilities licensed pursuant to the Oklahoma Continuum of Care and Assisted Living Act, ~~or~~

d. facilities licensed pursuant to the Oklahoma Nursing Home Care Act, or

e. any facility where the endowed prepayment, license or entry fee is less than Fifty Thousand Dollars ($50,000.00).

6. "Policy" means any policy, contract, certificate, subscriber agreement, rider or endorsement delivered, or issued for delivery, in this state by an insurer, fraternal benefit society, nonprofit health, hospital, or medical service corporation, prepaid health plan, health maintenance organization, life care community, or any similar organization.

7. "Qualified long-term care insurance contract" means any:

a. individual or group insurance contract if the contract meets the requirements of Section 7702(B) of the Internal Revenue Code, as amended, and if:

(1) the only insurance protection provided under the contract is coverage of qualified long-term care services,

(2) the contract does not pay or reimburse expenses incurred for services or items to the extent that such expenses are reimbursable under Title XVIII of the Social Security Act as amended, or would be so reimbursable but for the application of a deductible or coinsurance amount. The requirements of this subparagraph do not apply to contracts where Medicare is a secondary payor, or where the contract makes per diem or other periodic payments without regard to expenses,

(3) the contract is guaranteed renewable,

(4) the contract does not provide for a cash surrender value or other money that can be paid, assigned, pledged as collateral for a loan, or borrowed. All refunds of premiums and all policyholder dividends or similar amounts, under such contract are to be applied as a reduction in future premiums or to increase future benefits, except that a refund of the aggregate premium paid under the contract may be allowed in the event of death of the insured or a complete surrender or cancellation of the contract, and

(5) the contract contains the consumer protection provisions set forth in Section 7702(B)(g) of the Internal Revenue Code, or

b. life insurance contract which provides long-term care coverage by rider or as part of the contract if the contract complies with the applicable provisions of Section 7702(B) of the Internal Revenue Code, as amended.

8. "Qualified long-term care services" means necessary diagnostic, preventive, therapeutic, curing, treating, mitigating, and rehabilitative services, and maintenance for personal care services for which an insured is eligible under a qualified long-term care insurance contract, and which are provided pursuant to a plan of care prescribed by a licensed health care practitioner.

SECTION 2. This act shall become effective November 1, 2016.

Passed the Senate the 28th day of April, 2016.

Eddie Fields
Presiding Officer of the Senate

Passed the House of Representatives the 6th day of April, 2016.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 2nd

day of May, 20 16, at 2:40 o'clock P M.

By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 5th

day of May, 20 16, at 3:09 o'clock P M.

Mary Fallin
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 5th

day of May, 20 16, at 3:38 o'clock P. M.

By: Chris Benge